

1 Telia Mary U. Williams, Esq.  
2 Nevada Bar No. 9359  
3 10161 Park Run Dr., Ste. 150  
4 Las Vegas, Nevada 89145  
5 Tel: (702) 835-6866  
6 [telia@telialaw.com](mailto:telia@telialaw.com)

7 Gwynne R. Dumbrigue, Esq.  
8 Nevada Bar No. 10031  
9 GRD Law Group, LTD.  
10 1819 E. Charleston Blvd., Ste. 101  
11 Las Vegas, Nevada 89104  
12 [attorneydumbrigue@gmail.com](mailto:attorneydumbrigue@gmail.com)

13 *Attorneys for Defendant,*  
14 *Latonia Smith*

15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 UNITED STATES OF AMERICA,  
18 Plaintiff,  
19 vs.  
20 LATONIA SMITH,  
21 Defendant.

22 Case No.: 2:19-cr-00304-RFB-VCF-1

23 **DEFENDANT'S REPLY TO  
24 GOVERNMENT'S OPPOSITION TO  
25 MOTION TO DISMISS**

26 **ECF NO. 210**

27 Certification: This reply is timely filed.

28 Latonia Smith, by way of her counsel, Telia Mary U. Williams, Esq., and  
Gwynne R. Dumbrigue Esq., briefly reply to the Government's opposition to her  
motion to dismiss. In particular, Ms. Smith will respond to the Government's  
additional argument (not raised in her initial motion) regarding the BB gun. Ms.  
Smith would respectfully and briefly point the court to just the following language,  
stated by the defendant in *Elonis*, which the United States Supreme Court

1 apparently deemed to be not a “true threat.” The defendant absolutely does not  
2 adopt these words, in no way whatsoever, neither subtly nor directly, not in any  
3 part, nor sentiment, but simply to highlight the issue of what is a “true threat.”  
4

5 In this case (*Elonis*), the ditty of the defendant, posted on a Facebook page  
6 was:  
7  
8

9 Me thinks the Judge needs an education

10 on true threat jurisprudence

11 And prison time'll add zeros to my settlement...

12 And if worse comes to worse

13 I've got enough explosives

14 To take care of the State Police and the Sheriff's Department.  
15  
16

17 See *United States v. Elonis*, 730 F.3d 321, 326 (3d Cir. 2013), reversed by *Elonis v.*  
18 *United States*, 135 S. Ct. 2001 (2015). Not content to leave it there, Elonis also  
19 wrote to his estranged wife (directing it to her on Facebook):  
20  
21

22 There's one way to love you but a thousand ways to kill you. I'm not going to  
23 rest until your body is a mess, soaked in blood and dying from all the little  
24 cuts.  
25  
26  
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1       Elonis' ex-wife sought and received a Protection from Abuse Order (a "PFA"). That  
 2       did not stop Elonis, who persisted:  
 3  
 4

5           Fold up for PFA and put it in your pocket[.] Is it thick enough to stop a  
 6           bullet?  
 7  
 8

9       Elonis threatened to "initiate the most heinous school shooting ever imagined," and  
 10      after confronted by the FBI, publicly wrote about the female officer, that "it took all  
 11      the strength" he had not to "slit her throat." *See generally, id.*

12       Not surprisingly, Elonis was convicted under § 875(c) for making threatening  
 13      communications (analogous to §876(c)).  
 14

15       However, the Supreme Court reversed; the high court did not determine the  
 16      above words to be a "true threat." The majority opinion conspicuously declined to  
 17      address the larger constitutional issue of whether the First Amendment requires a  
 18      showing of subjective intent to threaten in order to constitute a "true threat," a fact  
 19      of interest to many legal commentators in this area of the law.<sup>1</sup>  
 20

21       But, importantly, this case shows that while the words of the alleged  
 22      communications are important, and the most important in pure speech crimes,  
 23      (particularly under the First Amendment standard), it is still *Bagdasarian* (cited in  
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25  
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 27           <sup>1</sup> See e.g., *Elonis v. United States*, ("Because *Elonis* was [ultimately] decided on  
 28      statutory grounds, 'true threats' remain a doctrinal puzzle for lower courts."). Harvard Law  
 Review, 129 Harv. L. Rev. 331 (Nov. 10, 2015): First Amendment: Speech.

1 defendant's motion, and to an equal extent, *Virginia v. Black*), that should guide the  
2 court in deciding whether or not Ms. Smith's alleged threatening communications  
3 are in fact true threats. And the subjectivity of that standard, from the perspective  
4 of the alleged wrongdoer, is to be drawn from the letters themselves.

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6 Dated this 23rd day of April, 2021.

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8 Respectfully submitted,

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LAW OFFICE OF TELIA U. WILLIAMS  
/s/ Telia Mary U. Williams, Esq.  
Telia Mary U. Williams, Esq.  
10161 Park Run Dr., Ste. 150  
Las Vegas, NV 89145

Gwynne R. Dumbrigue, Esq.  
GRD Law Group, LTD.  
1819 E. Charleston Blvd., Ste. 101  
Las Vegas, Nevada 89104

Attorneys for Defendant, Latonia Smith

#### **CERTIFICATE OF SERVICE**

19 The undersigned hereby certifies that on the following date the foregoing was  
20 electronically filed with the Clerk of Court using the CM/ECF system which sent  
21 notification of such filing to all counsel of record. At the same time, a copy of the  
22 document was sent to Government counsel by email, and a hard copy of this motion  
23 was also mailed to the defendant in custody.

24  
25 Dated: April 23, 2021

26  
27  
28 /s/ David DaSilva

For the Law Office of Telia U. Williams